

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CRIMINAL ACTION
v.)	
)	No. 98-20005-01-KHV
BRIAN C. PRINCE,)	
)	
Defendant.)	
_____)	

MEMORANDUM AND ORDER

This matter is before the Court on defendant’s letter (Doc. #197) filed November 14, 2016, which the Court construes as a motion to proceed in forma pauperis on appeal. Because the Court appointed counsel for defendant under 18 U.S.C. § 3006A, he financially qualifies for in forma pauperis status. See Fed. R. App. P. 24(a). Under Rule 24(a)(1)(C), however, defendant’s motion must also state the issues which he intends to present on appeal. Rule 24(a) requires such a statement because the district court will deny in forma pauperis status if it determines that the appeal is not taken in good faith. See Fed. R. App. P. 24(a)(3)(A). Good faith is an objective standard measured by whether the appeal is “frivolous” or lacks a “rational argument on the law or facts.” See Coppedge v. United States, 369 U.S. 438, 448 (1962). Defendant appeals this Court’s order overruling as moot his motions to vacate sentence. See Order (Doc. #187) filed October 11, 2016. The Court overruled defendant’s motions to vacate because (1) the Court had already vacated his revocation sentence and judgment in light of the Tenth Circuit order and (2) to the extent that Johnson v. United States, 135 S. Ct. 2551 (2015), applied to his future revocation sentence, counsel

could raise any such arguments at resentencing.¹ Defendant has not shown any good faith basis to appeal this Court's order. The Court therefore overrules defendant's motion to proceed *in forma pauperis*.

IT IS THEREFORE ORDERED that defendant's letter (Doc. #197) filed November 14, 2016, which the Court construes as a motion to proceed without prepayment of fees, is **OVERRULED**.

Dated this 5th day of December, 2016 at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge

¹ Likewise, to the extent that defendant contends that Johnson compels his immediate release pending resentencing, appointed counsel can raise any such argument.